

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

MATTHEW ABRAHAM)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2005-111
)	
VIRGINIA STINE and MICHAEL)	
STINE, d/b/a "SKY PIRATE" and)	
the vessel SKY PIRATE,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Julie German Evert, Esq.
St. Thomas, U.S.V.I.
For the Plaintiff.

Virginia Stine
Pro Se.

Michael Stine
Pro Se.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of the plaintiff, Matthew Abraham ("Abraham"), for a writ of garnishment of the wages of the defendants, Virginia Stine and Michael Stine (the "Defendants").

I. FACTS

On May 2, 2005, Abraham brought this action against the Defendants, alleging that he suffered personal injuries when a coolant tank aboard a vessel owned by the Defendants exploded.

On January 10, 2006, following the withdrawal of the Defendants' counsel, the magistrate judge ordered the Defendants to engage successor counsel within twenty days of the order, failing which the action would proceed by default. The Defendants failed to engage successor counsel. On May 22, 2006, the magistrate entered a default judgment in favor of Abraham. The default judgment states that an entry of default was entered on April 12, 2006 and that Abraham consented to the magistrate assessing damages.¹ The default judgment awarded Abraham \$1,405,000, plus \$650 for costs. Abraham now moves for a writ of garnishment of the Defendants' wages to satisfy the default judgment issued by the magistrate.

II. DISCUSSION

A magistrate may hear and determine most nondispositive matters pending before the court.² Absent consent by all parties involved in the action, dispositive matters may only be resolved by a district judge. 28 U.S.C. § 636(c)(1); *see also NLRB v. Frazier*, 966 F.2d 812, 816 (3d Cir. 1992). While a magistrate

¹ The record does not contain the entry of default, and the default judgment does not indicate the manner in which Abraham consented to the magistrate assessing damages.

² Federal Rule of Civil Procedure 72(a) provides magistrate judges with discretion to resolve nondispositive disputes. *See* Fed. R. Civ. P. 72(a); *Nicholas v. Wyndham Int'l, Inc.*, 224 F.R.D. 370, 371 (D.V.I. 2005) (citing *National Gateway Telecom, Inc. v. Aldridge*, 701 F. Supp. 1104, 1119 (D.N.J. 1988), *aff'd* 879 F.2d 858 (3d Cir. 1989)).

judge may conduct hearings on dispositive matters, proposed findings of fact and recommendations must be submitted to a district judge of the court for disposition. 28 U.S.C. § 636(b)(1)(B). Under such circumstances, the district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made [and] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [magistrate judge]." 28 U.S.C. § 636(b)(1)(C).

While 28 U.S.C. § 636 does not "specifically allow a referral of a motion for default judgment, [it does] not preclude a magistrate judge from recommending, upon proper reference of a pretrial matter (including a motion question), that a default judgment be entered against a party for good cause determined." *Callier v. Gray*, 167 F.3d 977, 981 (3d Cir. 1999) (citing *Ackra Direct Marketing v. Fingerhut Corp.*, 86 F.3d 852, 855 (8th Cir. 1996) (noting that "the magistrate judge issued his report, and recommended that the motion for default judgment should be granted in its entirety"))).

The record does not show that Abraham applied for a default judgment. See *Lansford-Coaldale Joint Water Auth. v. Tonolli Corp.*, 4 F.3d 1209, 1226 (3d Cir. 1993) (noting that Fed. R. Civ. P. 55(b)(2) requires that the non-defaulting party apply for a default judgment). Furthermore, although the default judgment

states that an entry of default was entered on April 12, 2006, neither the record nor the docket sheet shows that there was an entry of default. See *Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc.*, 175 Fed. Appx. 519, 521 n.1 (3d Cir. 2006) ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).").

There is also no evidence in the record of the Defendants' consent to the magistrate's exercise of the Court's jurisdiction to enter a final judgment. Finally, the record does not reflect a referral by the district judge of the motion for a default judgment.

III. CONCLUSION

Accordingly, it is hereby **ORDERED** that the May 22, 2006 default judgment is **VACATED**.

It is further **ORDERED** that the motion for a writ of garnishment is **DENIED** as moot.

Dated: September 27, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

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copy: Hon. Geoffrey W. Barnard
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